

The Atlanta Daily Constitution.

WEDNESDAY MORNING, Feb. 25, 1877.

THE ELECTORAL COUNT.
THE VOTES OF THE THREE PARTIES AND HOW THEY WERE DIVIDED.

It is now probable that the count will be permitted to proceed without undue delay. It is probable that the votes of the three parties and now infamous judges will be able to reverse the popular majority, at 24,526,272 for Mr. Tilden, and put his defeated opponent in the White House for four years. The plan of the electoral bill is good enough, but the judges whom the people trusted, flung aside their judicial character to become bitter and unscrupulous partisans. Their decisions have been so crooked, inconsistent and openly partisan—anything but to elect Hayes—that no supporter of the compromise plan is morally bound to sustain the acts of the commission, or fraud resounds any agreement.

And yet a majority of the democrats in congress have practically agreed that the count is to go on until the fraud is consummated. This may be well looking to the political future that is weary years ahead. It may be best when the interests of suffering commerce are considered. But wise as it may be for the future, and prudent as it may be for the present, the inauguration of any other man than Mr. Tilden is a fraud without a alleviating feature.

To consummate it whole states have been disfranchised, and a vast popular majority utterly disregarded. Under such circumstances, are democrats and obligation to facilitate the fraud by legislative act of indecent haste? The shameless commission, which took seven days to consider the Florida case, four days that of Louisiana, and three days that of Oregon, will doubtless have the South Carolina case ready for submission to congress to-day. Must the democrats become accessories to the crime by hastening on the defeat of the popular will? We see no reason why they should. Improper delay may not be advisable when the villainy is as good as consummated, but there is no reason why our representatives should become participants in the inquiry that three judges and a score of circumstances have made, inevitable. Let the conspirators push on the count unaided. Let them have their pound of flesh, but not a drop of comfort from democratic ranks.

JOURNALISM IN ATLANTA.

Our readers doubtless notice in the proceedings of the late lamented legislature reports of the progress of a bill to incorporate "The Atlanta Constitution Publishing Company." As the Constitution had long purposed to be published by a corporation of the name just mentioned, curiosity as to the new bill was natural and pardonable. The explanation is very simple. The new charter indicates no change in proprietorship, no change in management, no change in any sense except one strictly legal. The Constitution procured a charter under a general law that provides for the organization of certain corporations. But that law, owing to a constitutional reservation, does not authorize the incorporation of manufacturing companies. The production of a newspaper is clearly a manufacture. A newspaper establishment is in fact nothing more nor less than a factory. The original charter was therefore void. The company was but a partnership, in which every stockholder, even if he held but a single share, was liable for all the debts of the concern. The new charter transforms the partnership into a corporation, which accounts for the milk in the legislative cocomut.

Now that we have begun by talking about ourselves, let us go on and talk about our contemporaries of the past. We can do this with propriety, as all piano looking to the establishment of another paper are just now taking a rest. We can not therefore be accused of attempting to discourage rivalry; and we utilize the interregnum to correct some statements that recently appeared in Bridges Smith's Paper. We quote:

The great objection urged by epithets who asked to invest in a newspaper enterprise, to the establishment of a competitive journal in Atlanta is that all attempts hitherto have proved disastrous. This objection can be met with facts. In nearly every case of newspaper there has been known to be an individual or individuals whose names could be easily matched by a newspaper. In the first place the New Era was an exponent of radicalism in Georgia. When the party failed the Sun failed also. The Sun was eclipsed by its anti-Greely movement. The New Era went into oblivion because it was not a newspaper. The Sun was born again in the second season of the year. The Times, never a first class journal, was badly managed from the jump and never had any capital. It never owned the type on which it was printed.

The "truth of history" demands that this paragraph should be confronted by the facts; for Mr. Smith's information has wandered widely from them. The Sun's anti-Greely movement did not hurt it in the least. It was "able" but not neway, argumentative but not enterprising. It died because it was not popular, and could not command a hearty patronage. Mr. Stephens kept it afloat long after it should have been in its grave, and the effort cost him \$23,000 above all the profits he ever received from it.

The New was not run against "two well-established journals." Atlanta never contained two such journals at one and the same time.

Mr. Abrams may have started the Herald, "on nothing," but capital quickly came to it and kept on coming until \$40,000 beyond the earnings were hopelessly lost in the effort to put it on foot. There was no year in its whole existence in which receipts equalled expenditures. It was never "established" and was never in the "hoodlum of success."

The Courier may have been started in the dullest season of the year. It was started in February, 1876.

Otherwise the paragraph is substantially correct.

Rev. Dr. John Mous, of Chasapeake, has been appointed by the pope bishop of St. Augustine, Florida, to fill the vacancy caused by the death of Bishop Verot.

THE NORTH GEORGIA RAILROAD.

The friends of the road are now very sanguine of success, and are working with zeal and energy. The act passed at the late session of the general assembly will enable the company to lay the iron and put the road in operation to Canton, and to complete the grading and bridging to Murphy, N. C. Of course all this cannot be done with the amount loaned the company by the state, but the state loan insures confidence on the part of the people, and largely increased subscriptions are confidently expected. There is no longer reason to regard subscription as a donation. It is an investment—one which will pay well if the company continue the economical management of the past. The experience of three years will enable the company to better utilize the means they may have. We are gratified to know that our townsmen, Colonel Robert Maddox, will tender the position of financial agent of the company. This is an absolute guarantee that every dollar will be expended in the right direction and in furtherance of the enterprise. His well deserved reputation as an able financier and a man of confidence integrity will increase confidence at home and abroad. Atlanta is deeply interested in the success of the road, and it is to be hoped that our merchants, mechanics, manufacturers and business men of all classes will lend their aid and contribute substantial help so as to enable the company to purchase rolling stock and equipment. Marietta and the people on the line will now strain every nerve and help in every way they can. By such an effort, the people of the mountains will very soon have a way opened up to the markets of the world, and wealth now hidden will be added to the prosperity of the whole state.

SUPREME COURT.

DECISIONS RENDERED FEBRUARY 27, 1877.

Hon. Miriam Warner, Chief Justice; Messrs. E. B. Bickley and James Jackson, Judges—Exclusively reported to the Constitution by Hon. J. M. Scott, Supreme Court Reporter.

Western Union Telegraph Co. vs. Fontaine, Case from Muscogee.

WARNER, C. J.

The plaintiff brought his action against the defendant to recover damages, which he alleged had been sustained in consequence of the breach of duty and negligence of the defendant, in failing to send and deliver a certain described telegraph message received by him from the plaintiff at Columbus, Ga., to the plaintiff at a certain stipulated reward, to Nourse & Brooks at the city of New York. On the trial of the case, the jury, under the charge of the court, found a verdict in favor of the plaintiff for the sum of \$363.00. A motion was made for a new trial on the part of the defendant, and the court granted it. The message was sent by the defendant's agent and operator at Columbus to some repeating office between that point and New York. When repeating office? I ask, as much as the defendant had the exclusive control of its own machinery, operators, and agents, it should have shown that the message was sent by the plaintiff without delay. Judgment reversed.

E. R. Hinton & Son, by Z. D. Harrison, for plaintiff in error.

No appearance for defendant.

The Eagle and Phenix Manufacturing Company vs. Brown, Assumpat, from Muscogee.

BLECKLEY, J., concurring.

I am inclined to the opinion that the business of telegraphing consists merely in receiving orders for work and labor and executing them. Strictly speaking, it is not a carrier, and does not require a carriage of property.

The sender of a message gives an order for certain work to be done, and the telegraph company undertakes to do it.

A part of it is performed by the use of scientific machinery, and a part by the carriage and delivery of a package, or article, or articles, but while the company furnishes and prepares for itself. While I take this view of the matter, I do think the company can stipulate against liability for its own gross negligence. No business carried on requires that it be done. I concur in the judgment.

JACKSON, J., concurring:

I concur in the judgment of this court affirming the suit of the defendant to recover damages, which he alleged had been sustained in consequence of the breach of duty and negligence of the defendant, in failing to send and deliver a certain described telegraph message received by him from the plaintiff at Columbus, Ga., to the plaintiff at a certain stipulated reward, to Nourse & Brooks at the city of New York. On the trial of the case, the jury, under the charge of the court, found a verdict in favor of the plaintiff for the sum of \$363.00. A motion was made for a new trial on the part of the defendant, and the court granted it. The message was sent by the defendant's agent and operator at Columbus to some repeating office between that point and New York. When repeating office? I ask, as much as the defendant had the exclusive control of its own machinery, operators, and agents, it should have shown that the message was sent by the plaintiff without delay. Judgment reversed.

Peabody & Brannon, for defendant in error.

No appearance for defendant.

John P. Fort, administrator, garnishee, vs. E. L. Strohecker. Motion to set aside judgment, from Bibb.

JACKSON, J.

A judgment against a garnishee, rendered after a full hearing, will not be set aside on motion because of any defect in the testimony to support the judgment, even though that testimony be a judgment against the principal debtor in a justice's court, which did not show on the face of the proceeding that the justice court had jurisdiction.

The judgment against the garnishee is valid notwithstanding a judgment of a court which had jurisdiction, and in respect to that judgment the case is *res adjudicata*, and the grounds of objection to the defective judgment as evidenced, should have been made and set aside by the party which resulted in the judgment against the garnishee, and when he had his day in court.

Judgment affirmed.

John P. Fort, for plaintiff in error.

Peabody & Brannon, for defendant.

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Preferred Locality.

SUGAR CREEK PAPER MILLS.
WM. MCNAUL & CO.
New Daily and Weekly Controversies for Specie
men of our "news."

Supreme Court Decisions
The Decisions for the July Term
1876, are now ready. To regular subscribers
the pamphlet will be furnished at \$1.00 per copy; and
\$2.00 to those who are not.

Jennings & Co.,
WHITE PINE
SASH, DOORS, BLINDS,
35 Decatur Street.

The people want Price.

There is no medicine prescribed by

physicians, or sold by Druggists, that carries such

evidence of its success and superior virtue as

Boucman's GERMAN SYRUP for severe Coughs

and Diseases settled on the Broadest Convalescence, any

disease of the Throat or Lungs.

It has been often advised, to give a Sample

of this syrup, and try its superior effect before buying the regular size at 25 cents.

It has been introduced into this country from Ger-

many, and its wonderful curative powers are astonishing

every one that uses it. Three days will relieve any

sore. Try it, both by yourself.

HOTEL, HANLEY & LEAHY,
Court-Side Agents.

New Attestations.

Printed on the back—Walter A. Boyd

Sale Impeached—A. Anderson

Chester rock coal company—Jesse L. Brown,

25 grand—Henry J. Hill.

Burnett's hotel—Barham & Co.

Salem—Dunning & Co.

Men want—51 Peachtree street.

Park Hotel—Standard Bank.

Oysters and shad—F. Emery.

Dr. Bell's Cough Syrup.

Globules—Dr. J. McLean.

Constituent Atlanta Medical College.

Exhibition of Med' Plant to-day.

Atlanta Medical College.

The commencement exercises of the

Atlanta Medical College will be held at Dr. G. W.

Opie's Hall, Thursday, March 1, 8 p.m.

All invited.

JNO. T. TAD. JONES,

363 Peachtree street.

Seed Planter.

Owing to a misunderstanding the

Seed Planter was not exhibited yesterday. It will

occur to-day at 10 o'clock on Mrs. Mood's lot,

opposite the Carters' Hall, 15 Peachtree street.

Palmetto's Neaties.

The honors conferred upon Messrs.

Fitzharris & Co. at the various International Ex-

hibitions entitle them to the distinction of Cham-

pion Scale Builders of the world. There is no one

so well entitled to the position of greatest

successor to the various Nationalities of the Palmetto's Scale

Builders of Standard. It is no wonder, therefore, that

their immense fortune can be kept running the

whole winter over, in these days, in full force.

We are informed that the United States Govern-

ment alone has within the past three years or-

dered more than 7,000 of their judiciously celebrated scales.

Gen. Gustavus J. Orr.

The Georgia Grange thus puts in

nomination as delegate to the constitutional con-

vention, a man whose every qualification is emi-

nently sound and conceded. This district

counts him among the best men of the state.

"He is providing for the holding of a conven-

tion of the people of Georgia, for the purpose of

revising the constitution of this state, is a most

important one. The delegates should un-
questionably represent the best talent, the clearest

intellect, the purest patriotism that can be found in

Georgia. To such men only should be in-
trusted the authority of giving permanent

reformed laws, that are in accordance with the

true spirit of liberty, the interests of our people,

and the demands of our age."

To represent this district in the convention, we

put forward the name at the head of this article.

Professor Orr will be the delegate of the con-

vention, and become one of the delegates from

this district.

Every word of the above is the truth. There is

no man, in this district, who can represent more

boldly, more nobly, or more patriotically, our people and the best interests of the state, in gen-

eral, than Hon. Gustavus J. Orr. Every true man honours him, every intelligent citizen respects

him, and every good man, and woman, in this

district, loves him. He will do more for our

country, and for our people, than any other mem-

ber of the constitutional convention.

It is sincerely hoped that Prof. Orr will allow his name to be used in the election for delegates

to the convention, and the voice of the people demand it.

FULTON.

Duplicate Militia Districts.

There are a number of militia districts in the

state whose numbers are duplicated. Some

thing should be done to rectify these errors. The

following are the numbers duplicated:

445 in Jackson and Appling.

75 in Fulton and DeKalb.

83 in Cobb and Bartow.

874 in Murray and Barrow.

958 in Paulding and Bartow.

1041 in Paulding and Bartow.

1230 in Brooks and Bibb.

1250 in Fulton and Troup.

1260 in Carroll and Floyd.

1265 in Heard and Cherokee.

1270 in Fayette and Etowah.

1275 in Coweta and Etowah.

1280 in Lowndes and Colquitt.

1285 in Upson and Crawford.

1287 in Thomas and DeKalb.

1295 in Houston and Talbot.

1298 in Emanuel and Putnam.

1304 in Fulton and Glasscock.

1305 in Glinton and Grayson.

1306 in Cherokee and Heard.

1307 in Henry.

1308 in Ware and Houston.

1309 in Muscogee and Houston.

1310 in Lee and Sumter.

1311 in Marion and Talladega.

1312 in Monroe and Lowndes.

1313 in Fulton and Lumpkin.

1314 in Union and Lumpkin.

1315 in Monroe and Fulton.

1316 in Ware and Putnam.

1317 in Whidbey and Putnam.

1318 in Stewart and Randolph.

1319 in Baker and Walker.

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